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## Car's Black Box Evidence Ruled Admissible

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Evidence gleaned from a car's "black box" -- a computer module that, among other things, records a vehicle's speed in the last five seconds before airbags deploy in a collision -- will be admissible in the New York trial of two men charged with second-degree murder.

The defendants, Kyle Soukup and Blake Slade, were involved in a fatal three-car accident while in a race on a Nassau County, N.Y., highway on a night in June 2002, authorities say.

The ruling in *People v. Slade*, No. 0666-2003, by acting Nassau County Supreme Court Justice Alan M. Honorof followed a hearing testing the science behind the evidence. The decision following the hearing is one of the first of its kind in New York state.

"It's a powerful piece of evidence," said Assistant District Attorney Michael Walsh, the lead prosecutor on the case.

Soukup's lawyer, Jack Litman of Litman, Asche & Gioiella could not be reached for comment. His associate, Todd Terry, said that the firm was not making public statements about the case.

Ronald Bekoff of Garden City, N.Y.'s Hession, Bekoff & Cooper, who represents Slade, could not be reached for comment.

According to the prosecutor, Soukup, now 19, and Slade, now 22, were friends racing in separate cars on Route 106 through Old Brookville, N.Y., in northeastern Nassau County.

As they approached the Muttontown Road intersection, Soukup, driving a 2002 Chevrolet Corvette at nearly 130 miles per hour, slammed into a 1993 Jeep Cherokee, tearing that vehicle in half.

A split second later, Slade, driving a 2002 Mercedes, rammed into the front end of the Jeep, knocking it 300 yards up the road.

"You see headlights in the distance," Walsh said of the Jeep driver's decision to cross the road. "You can't image how quick they'll be on you."

One of the Cherokee's occupants, Sophia Bretous, was dead at the scene. Her companion, Jean Desir, died later that night at the Nassau University Medical Center.

According to Honorof's ruling, at least three other drivers say they witnessed the contest and the ensuing collision.

Their testimony is important too, Walsh said, asserting that he could have built a case from those accounts and the testimony of accident reconstruction experts.

However, the black box, formally called a sensing diagnostic module, enables the prosecution to establish the Corvette's speed, engine revolutions, throttle position and use of the brakes for the critical moments before the impact.

Police officers removed the sensing module from Soukup's wrecked car after it was in their possession but before they had a search warrant. They later applied for and obtained a warrant based upon witnesses' affidavits and information they had obtained before entering the vehicle.

### **'FRYE' HEARING**

Soukup's lawyer, Litman, moved to suppress the black box and its data as the products of an unlawful search and seizure.

He also challenged the scientific reliability of the data.

The court held a so-called *Frye* hearing, derived from the 1923 ruling in *Frye v. U.S.*, 293 F. 1013, by the U.S. Court of Appeals for the District of Columbia Circuit.

*Frye* provides for a "general acceptance test" of expert testimony, Honorof noted. It dictates that scientific evidence is admissible only if the underlying methodology or scientific principle is sufficiently established to have gained general acceptance in its field.

Testifying for prosecutors at the hearing was William Russell "Rusty" Haight, director of the Collision Safety Institute in San Diego. He has more than 23 years of experience in the science of accident reconstruction, the judge said.

Haight told the court he has performed more than 100 crash tests with different cars made by the same manufacturer of Soukup's Corvette. Comparing the data recorded by the black boxes in those tests with objective external instrumentation, Haight found sensing diagnostic modules "extremely reliable," the judge said.

Honorof ruled that the black box data were admissible, even though the police had obtained it before applying for a search warrant.

Turning back Litman's argument that his client had a reasonable expectation of privacy in the car and its contents, the judge ruled that Soukup's operation of the vehicle on a public highway knowingly exposed his behavior to the public. Observed by at least three witnesses, his velocity was not a private matter, the judge said.

He noted that the police searched not only the engine compartment containing the black box, but also the car's passenger compartment, in which Soukup may have had a reasonable privacy expectation.

Nevertheless, the judge found that because the detectives obtained a warrant based not upon information obtained from the car, but from eyewitnesses and observations at the crash scene, the search was covered by the "independent source rule."

That rule preserves the admissibility of otherwise tainted proof if it was "obtained independently from lawful activities untainted by the initial illegality," the judge wrote.

Walsh said he expects the case to go to trial in March. There can be no appeal of the ruling unless the defendants are convicted.